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10 *Huawei Device USA, Inc., Huawei Technologies*
11 *USA, Inc., and HiSilicon Technologies Co. Ltd.*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

13 HUAWEI TECHNOLOGIES CO., LTD.,
14 HUAWEI DEVICE USA, INC., and
15 HUAWEI TECHNOLOGIES USA, INC.,

16 Plaintiffs / Counterclaim-Defendants,
17 v.

18 SAMSUNG ELECTRONICS CO., LTD.,
19 SAMSUNG ELECTRONICS AMERICA,
20 INC.,

21 Defendants / Counterclaim-Plaintiffs,
22 and

23 SAMSUNG RESEARCH AMERICA,
24 Defendant,
25 v.

HISILICON TECHNOLOGIES CO., LTD.,
Counterclaim-Defendant.

Case No. 16-cv-02787-WHO

HUAWEI'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF HUAWEI'S SUMMARY
JUDGMENT AND DAUBERT MOTIONS

Pursuant to Civil Local Rule 79-5, Plaintiffs and Counterclaim-Defendants Huawei Technologies Co., Ltd., Huawei Device USA, Inc., and Huawei Technologies USA, Inc., and Counterclaim-Defendant HiSilicon Technologies Co., Ltd. (collectively, “Huawei”) hereby move to seal the following portions of Huawei’s Motion for Summary Judgment (“Huawei’s MSJ”) and the Declaration of John McBride in support thereof, Huawei’s Daubert Motion for Technical Issues (“Huawei’s Daubert Motion”) and the Declaration of John McBride in support thereof, and Huawei’s Motion to Preclude Samsung’s FRAND Experts from Offering Improper Legal Opinions (“Huawei’s Motion to Preclude”) and the Declaration of Leif Peterson in support thereof.

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality	Basis for Sealing
<i>Sealing Requests for Huawei’s MSJ and Supporting Exhibits</i>			
Huawei’s MSJ	Yellow-highlighted portions (page 8, lines 12, 15-18; footnote 8; page 10, lines 10-11, page 14, lines 1-11, table; page 18, lines 1-27 and Figure 8; page 19, lines 1-7 including Figure, footnote 13)	Huawei, Samsung	Licensing, Product
Huawei’s MSJ	Green-highlighted portions (page 2, lines 16-24; page 3, lines 19-25; page 4, lines 6-10; page 5, lines 3-4, 27; page 7, lines 6-8, 12-13; page 9, lines 14-15, footnote 8; page 10, lines 6-9, 12-13; page 11, line 13; page 14, table; page 25, lines 6-7, 11-15)	Samsung	79-5(e)
Huawei’s MSJ	Blue-highlighted portions (page 14, table; page 19, lines 8-22)	Samsung, Qualcomm	79-5(e)
Huawei’s MSJ, Exhibit 2 to the McBride Declaration in support thereof	Yellow-highlighted portions (page 47 lines 1-4)	Huawei	Licensing
Huawei’s MSJ, Exhibit 8 to the McBride Declaration in support thereof	Yellow-highlighted portions (page 16, lines 18-25; page 17, lines 1 and 20-24; page 18, lines 5-24; pages 29-30)	Huawei	Licensing, Arbitration

1	Huawei's MSJ, Exhibit 9 to the McBride Declaration in support thereof	Yellow-highlighted portions (page 221, line 19; page 222, lines 21-25; page 223, lines 3-6, 10-13, 17-21; page 224, lines 6-8; page 225, lines 1-4, 7-10, 14-15, 24-25; page 226, lines 10, 16-17, 23-24)	Huawei	Licensing
2	Huawei's MSJ, Exhibits 11-16, 20 to the McBride Declaration in support thereof	Entire document	Huawei, Samsung	Licensing
3	Huawei's MSJ, Exhibit 26 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 126-27; 141-46, including all of Figure 8 on page 144 and Figure 3 on page 145; 155; 157; 158, including all of Figure 8; 159, including all of Figure 3; 160-62; 222-23; 232; 234; 274) [product information]	Huawei	Product
4	Huawei's MSJ, Exhibit 27 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 68-69; page 89, lines 13-17; page 90, lines 3-9)	Huawei	Product
5	Huawei's MSJ, Exhibit 27 to the McBride Declaration in support thereof	Blue-highlighted portions on pages 146-47, 155, 162-63	Samsung, Qualcomm	79-5(e)
6	Huawei's MSJ, Exhibit 29 to the McBride Declaration in support thereof	Page 3, entire page	Huawei	Product
7	Huawei's MSJ, Exhibit 29 to the McBride Declaration in support thereof	Pages 1-2, entire pages	Samsung, Qualcomm	79-5(e)
8	Huawei's MSJ, Exhibit 36 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 119, 167-71, 180-83)	Huawei	Product
9	Huawei's MSJ, Exhibit 36 to the McBride Declaration in support thereof	Blue-highlighted portions on pages 171-74, 183-87	Samsung, Qualcomm	79-5(e)

1	Huawei's MSJ, Exhibit 37 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 233, 237, 282)	Huawei	Product
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3	Huawei's MSJ, Exhibit 41 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 141-43, 310) (Note: Exhibit 41 contains yellow-highlighted portions on other pages, present in the original document, that Huawei does not request to seal)	Huawei	Product
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7	Huawei's MSJ, Exhibit 41 to the McBride Declaration in support thereof	Blue-highlighted portions (pages 148-49)	Samsung, Qualcomm	79-5(e)
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10	Huawei's MSJ, Exhibit 42 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 56-57)	Huawei	Product
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12				
13	Huawei's MSJ, Exhibit 42 to the McBride Declaration in support thereof	Blue-highlighted portions (page 60)	Samsung, Qualcomm	79-5(e)
14				
15	Huawei's MSJ, Exhibits 1, 2, 7-10, 17, 19, 24-28, 30, 38, 40-43 to the McBride Declaration in support thereof	Entire document	Samsung	79-5(e)
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19	<i>Sealing Requests for Huawei's Daubert Motion and Supporting Exhibits</i>			
20	Huawei's Daubert Motion	Yellow-highlighted portions (page 20, lines 27-28; page 21, line 1; page 25, lines 1-6)	Huawei	Product
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22	Huawei's Daubert Motion	Green-highlighted portions (page 2, line 28; page 3, lines 1-8, 14-15; page 7, lines 13-17; page 9, lines 6-10; page 10, lines 26-28; page 13, lines 22-28; page 14, lines 1-5; page 15, lines 3-5, 9; page 16, lines 4-9; page 17, lines 4-6; page 18, lines 19-20; page 19, lines 14-15; page 20, line 15; page 21, lines 3-5, 7; page 22, lines 25-28; page 25, lines 14-15)	Huawei	79-5(e)
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1	Huawei's Daubert Motion	Blue-highlighted portions (page 20, lines 25-27; page 25, lines 7-11)	Huawei	79-5(e)
2	Huawei's Daubert Motion, Exhibits 1-2, 7-8, 10-12, 14, 17, 20, 24-25, 29-30 to the McBride Declaration in support thereof	Entire document	Samsung	79-5(e)
3	Huawei's Daubert Motion, Exhibit 15 to the McBride Declaration in support thereof	Entire document	Samsung, Qualcomm	79-5(e)
4	Huawei's Daubert Motion, Exhibit 11 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 165, 166-68 including Figure 8 and Figure 3, 170-76 including Figure 8, Figure 19, and Figure 21, 179-84 including Figure 8 and Figure 3)	Huawei	Product
5	Huawei's Daubert Motion, Exhibit 11 to the McBride Declaration in support thereof	Blue-highlighted portions (pages 163, 168-69, 177, 184-85)	Samsung, Qualcomm	79-5(e)
6	Huawei's Daubert Motion, Exhibit 12 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 36, 203-05, 246)	Huawei	Product
7	Huawei's Daubert Motion, Exhibit 12 to the McBride Declaration in support thereof	Blue-highlighted portions (pages 205-07, 246-47)	Samsung, Qualcomm	79-5(e)
8	Huawei's Daubert Motion, Exhibit 23 to the McBride Declaration in support thereof	Yellow-highlighted portions (pages 172-77, 180-81)	Huawei	Product
9	Huawei's Daubert Motion, Exhibit 23 to the McBride Declaration in support thereof	Blue-highlighted portions (pages 177-79)	Samsung, Qualcomm	79-5(e)
10	<i>Sealing Requests for Huawei's Motion to Preclude and Supporting Exhibits</i>			
11	Huawei's Motion to Preclude	Green-highlighted portions (pages 1, lines 17-26; page 2, lines 1-2, 4-8; page 4, lines 8-9, 14-18, 20; page 5, lines 4-6)	Samsung	79-5(e)

1	Huawei's Motion to Preclude, Exhibit 2 to the Peterson Declaration in support thereof	Yellow-highlighted portions (page 15, paragraphs 29-31)	Huawei	Licensing
2	Huawei's Motion to Preclude, Exhibit 3 to the Peterson Declaration in support thereof	Yellow-highlighted portions (page 13, paragraph 14)	Huawei	Licensing
3	Huawei's Motion to Preclude, Exhibits 2-5 to the Peterson Declaration in support thereof	Entire document	Samsung	79-5(e)

9 Judicial records attached to a dispositive motion may be sealed if a party presents
 10 “compelling reasons” for sealing that outweigh the public policy favoring disclosure. *Kamakana v.*
 11 *City and Cty. of Honolulu*, 447 F.3d 1172, 1177 (9th Cir. 2006). Judicial records attached to a non-
 12 dispositive motion may be sealed for good cause. *Id.* The Ninth Circuit has recognized that “the
 13 right to inspect and copy judicial records is not absolute” and can be overcome by a showing that
 14 public disclosure of confidential information will harm a party’s “competitive standing.” *In re Elec.*
 15 *Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435
 16 U.S. 589, 598 (1978)). For instance, the Ninth Circuit has found that license agreements are “the
 17 precise sort of information” that could affect a party’s “competitive standing” if publicly disclosed.
 18 *Id.* at 569 (finding that typical confidential licensing terms such as “pricing terms, royalty rates, and
 19 guaranteed minimum payment terms” qualified as business information affecting competitive
 20 standing). Non-final royalty or payment terms discussed during negotiations have been afforded the
 21 same level of protection. *See Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1225-26 (Fed. Cir.
 22 2013); *Abaxis, Inc. v. Cepheid*, No. 10-cv-02840, 2011 WL 6002522, at *1 n.1 (N.D. Cal. Nov. 30,
 23 2011) (granting motion to seal term sheet discussed during licensing negotiations).

24 Here, there are compelling reasons to seal the above-listed portions of Huawei’s Motion for
 25 Summary Judgment, and there is good cause to seal the above-listed portions of Huawei’s non-
 26 dispositive Daubert Motion and Huawei’s non-dispositive Motion to Preclude. With respect to
 27 licensing-related information, as explained in the accompanying declaration of Nathan A. Greenblatt
 28

1 (“Greenblatt Decl.”), Huawei considers and treats its license negotiations as sensitive and
 2 confidential. *See* Greenblatt Decl. at ¶ 5. Within Huawei itself, access to such confidential license
 3 information is restricted. *Id.* The employees of Huawei’s IP Department understand the sensitive
 4 nature of such information, and understand their duty to not disclose the terms of these agreements.
 5 *Id.* Consistent with Huawei’s continuous efforts to ensure that its confidential license information is
 6 not disseminated more widely than necessary or required by law, the documents at issue here were
 7 produced as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEY’S
 8 EYES ONLY” pursuant to the Court’s Protective Order.

9 Public disclosure of the information would create an asymmetry of information between
 10 Huawei and its competitors and/or potential licensing partners, who could use the information to
 11 gain leverage and bargaining power in future license negotiations they would otherwise not have.
 12 *Id.* Future counterparties to license agreements could obtain an unfair insight into Huawei’s prior
 13 royalty rates, payment terms, and license strategies. *Id.* This would place Huawei at a significant
 14 business disadvantage vis-à-vis its competitors and potential licensing partners, and would create a
 15 serious risk of competitive injury. *See In re Elec. Arts, Inc.*, 298 F. App’x 568, 569; *see also Ovonic*
 16 *Battery Co. v. Sanyo Elec. Co.*, No. 14-cv-01637, 2014 WL 2758756, at *2-*3 (N.D. Cal. Jun. 17,
 17 2014) (finding that disclosure of “financial and other terms of licenses” could place the plaintiff “in a
 18 diminished bargaining position in future negotiations with potential customers and competitors,
 19 thereby causing significant harm to [plaintiff’s] competitive standing.”).

20 Public disclosure of highly confidential information regarding Huawei’s products accused of
 21 infringement in this case would also cause serious competitive injury to Huawei. Huawei considers
 22 such information highly confidential, does not disclose it to the public, and has implemented strict
 23 measures to protect the confidentiality of the information such as by producing source code in this
 24 case on a special source code computer with numerous safeguards against unauthorized access. *See*
 25 Greenblatt Decl., ¶ 6. Disclosure of this information to the public would harm Huawei’s competitive
 26 standing by giving competitors insight into Huawei’s product designs, including source code made
 27 available for inspection in this case. *Id.* Huawei’s competitors could copy Huawei’s product
 28 designs to improve competing products, thereby harming Huawei’s competitive standing in the

1 market for the accused products. *Id.* Trade secret information concerning the design, operation, and
 2 source code of products accused of patent infringement is precisely the type of information that is
 3 routinely sealed by courts, and is precisely the type of information that the Federal Rules and courts'
 4 protective orders and sealing orders are designed to safeguard. *See, e.g.*, Fed. R. Civ. P 26(c)(1)(G);
 5 *Kamakana*, 447 F.3d at 1179.

6 With respect to information about Huawei's past arbitration proceedings, sound public
 7 policy recognizes an important interest in keeping arbitration proceedings confidential, even if the
 8 arbitration documents themselves do not contain trade secrets *per se*. "Courts tend to honor parties'
 9 decisions to enter into confidential arbitration; thus, they keep those proceedings, including awards,
 10 confidential, particularly because: (1) parties often enter into them to maintain confidentiality; and
 11 (2) it promotes the voluntary execution of private arbitration agreements—a sound public policy
 12 objective." *Barkley v. Pizza Hut of Am., Inc.*, No. 614CV376ORL37DAB, 2015 WL 5915817, at
 13 *2 (M.D. Fla. Oct. 8, 2015). Indeed, "the federal policy in favor of arbitration is promoted by
 14 permitting one of the principle advantages of arbitration-confidentiality-to be achieved. *Glob.*
 15 *Reinsurance Corp.-U.S. Branch v. Argonaut Ins. Co.*, No. 07 CIV. 8196 (PKC), 2008 WL 1805459,
 16 at *1 (S.D.N.Y. Apr. 21, 2008), as amended (Apr. 24, 2008); *Fireman's Fund Ins. Co. v.*
 17 *Cunningham Lindsey Claims Mgmt., Inc.*, No. 03CV0531(DLI)(MLO), 2005 WL 1522783, at *3
 18 (E.D.N.Y. June 28, 2005) ("There are important policy interest involved in protecting the
 19 expectations of confidentiality belonging to parties who have chosen an alternative means of
 20 dispute resolution. Federal policy, as evidenced by the enactment of the Alternative Dispute
 21 Resolution Act of 1998 and the Federal Arbitration Act, favors alternative dispute resolution
 22 ("ADR"), and particularly arbitration. Thus, protecting confidentiality agreements, such as the one
 23 between Highlands and defendant, promotes federal policy and encourages ADR by ensuring that
 24 parties in an arbitration proceeding get the protections for which they contracted.") (internal
 25 citations omitted)

26 Courts balance parties' confidentiality interest in arbitration proceedings against the public's
 27 right to access judicial records when deciding whether to permit sealing of arbitration materials.
 28 *DISH Network, LLC v. WLAJ-TV, LLC*, No. CV 16-0869, 2017 WL 1333057, at *2 (W.D. La.

1 Apr. 3, 2017) (“In exercising its discretion to seal judicial records, a court must balance the public's
 2 common law right of access against the interests favoring nondisclosure. . . .The fact that the parties
 3 agreed to keep documents confidential is a factor that supports a sealing order.”); *Seals v. Herzing*
 4 *Inc.-New Orleans*, 482 Fed.Appx. 893, 896 (5th Cir. 2012) (affirming district court's grant of a
 5 motion to seal in part “[i]n light of the parties' agreement to maintain confidentiality”).
 6 When arbitration materials have minimal relevance to the court's decision, courts permit sealing
 7 because the confidentiality interests easily outweigh the public's (non-)interest in accessing the
 8 materials. *See Liberty Re (Bermuda) Ltd. v. Transamerica Occidental Life Ins. Co.*, No. 04 CIV.
 9 5044 (NRB), 2005 WL 1216292, at *6 (S.D.N.Y. May 23, 2005) (“The parties argue that their
 10 strong interest in confidentiality coupled with the federal policy of encouraging arbitration justify
 11 sealing the entire Court record. With respect to the documents the parties submitted to this Court
 12 that do not form the basis of our opinion, we agree. Applying the standard discussed above, the
 13 presumption of public access in these background documents is minimal, while the parties have an
 14 interest in keeping the detailed records of their arbitration from public view.”); *First State Ins. Co. v.*
 15 *Nat'l Cas. Co.*, No. 13 CIV. 704 AJN, 2013 WL 8675930, at *3 (S.D.N.Y. Feb. 19, 2013)
 16 (“Arbitration allows confidentiality, a principle reason that parties opt for arbitration over litigation. . .
 17 . . Here, the proper balance between public access and confidentiality would allow the arbitration
 18 order to remain confidential.”).

19 Here, Exhibit 8 to the McBride Declaration in support of Huawei's Motion for Summary
 20 Judgment reveals details of confidential arbitrations between Huawei and third parties, which were
 21 conducted pursuant to agreements with non-disclosure agreements. *See* Greenblatt Decl., ¶ 7.
 22 Disclosing such details publicly could potentially subject Huawei to a claim for breach of contract
 23 based on the non-disclosure agreements with those parties. *Id.* Moreover, the ability to conduct
 24 arbitration in private pursuant to non-disclosure agreements is one factor that motivated the parties to
 25 engage in such arbitration to resolve their disputes. *Id.* Requiring public disclosure of details about
 26 the arbitrations could undermine the parties' willingness to resolve their disputes using that
 27 procedure. *Id.* Huawei has kept information about the arbitrations confidential, pursuant to its
 28 agreements. *Id.*

1 Finally, pursuant to Civil Local Rule 79-5(e), within 4 days of the filing of this
 2 Administrative Motion to File Under Seal, Samsung and/or Qualcomm must file a declaration as
 3 required by Civil Local Rule 79-5(d)(1)(A) establishing that the confidential material listed in the
 4 above table as designated by Samsung and/or Qualcomm is sealable. Because the above-listed
 5 documents intermix Huawei, Samsung, and Qualcomm confidential information, Huawei
 6 respectfully requests leave to submit the appropriate portions of the sealed filing to counsel for
 7 Qualcomm prior to the August 8, 2018 hearing date for the underlying motions, rather than
 8 immediately, to permit counsel for Huawei and Samsung to confer and ensure that counsel for
 9 Qualcomm is not inadvertently provided with Huawei and/or Samsung confidential information
 10 intermixed with Qualcomm confidential information in the exhibits.

11 For the above reasons, Huawei respectfully requests that the Court grant this sealing motion.

12 Dated: July 3, 2018

13 Respectfully submitted,

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